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AT

Administrative Tribunal

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ADMINISTRATIVE TRIBUNAL

Judgement No. 670

Case No. 729: ABDALA, ET AL

Against: The Secretary-General of the United Nations

THE ADMINISTRATIVE TRIBUNAL OF THE UNITED NATIONS,

Composed of Mr. Samar Sen, President; Mr. Jerome Ackerman, Vice-President; Mr. Mikuin Leliel Balanda;

Whereas at the request of Ali Abdala, the President of the Tribunal, with the agreement of the Respondent, successively extended the time-limit for the filing of an application with the Tribunal, on behalf of himself and 79 similarly situated staff members, to 15 April 1993 and 31 May 1993;

Whereas, on 17 May 1993, the Applicants filed a joint application containing pleas which, inter alia, request the Tribunal:

> "6. ... to rescind the contested decision of 19 June 1991 by the Officer-in-Charge, Department of Administration and Management (...) insofar as it applies to the remuneration in Amman of the General Service staff members who had been internationally recruited for service in Baghdad, and to order the Secretary-General to enter into immediate consultations with ESCWA staff representatives with a view to finding an equitable and mutually acceptable solution to the problem (...)."
>
> and
>
> "Pending the conclusion of such consultations, ... to order that the applicants be restored to the status quo ante by being returned, with retroactive effect, to the Baghdad

General Service salary scale with payment to them of a daily subsistence allowance for the duration of their temporary assignment to Amman (...)."

and further

"to commend to the Secretary-General's attention the two alternative solutions indicated by the Chairman, ESCWA Staff council in his letter of 6 October 1991 to the Assistant Secretary-General for Human Resources Management (...), i.e., retention of the Baghdad salary scale with payment of a daily subsistence allowance in Amman, or the grant to the applicants of Field Service status, among other options (...)."

as well as

"7. to award to them legal costs in the amount of $5,000 (...)."

Whereas the Respondent filed his answer on 30 June 1994;

Whereas the Applicants filed written observations on 5 October 1994, including a plea for an enhanced termination package;

Whereas the facts in the case are as follows:

The Applicant entered the service of the United Nations Economic and Social Commission for Western Asia (ESCWA, formerly ECWA) at its Headquarters in Beirut on 7 July 1980. He was given a three-month fixed-term appointment as a Personnel Clerk at the G-4 level. He continued to serve on a succession of fixed-term appointments of varying duration. On 1 July 1982, the Applicant's duty station was changed to Baghdad, and he acquired "internationally recruited" status. On 29 April 1986, he was granted a probationary appointment, made permanent on 1 January 1987. In August 1990, the Applicant was temporarily repatriated from Baghdad. On 1 August 1991, his duty station was changed to Amman. Apart from the different dates of entry in service and of differences in grade, the other 79 Applicants have a similar

employment history. They are all General Service staff members, internationally recruited for service with ESCWA in Baghdad, and subsequently relocated to Amman in 1991.

In 1981, the Secretariat of ESCWA relocated from Beirut to Baghdad. The Applicants, who had been locally recruited for service in Beirut, were transferred to Baghdad with the status of internationally recruited staff. This entitled them to various allowances and benefits under staff rule 104.7(a).

In August 1990, as a result of the Persian Gulf conflict, ESCWA's operations were suspended and all internationally-recruited staff members in both the Professional and General Service categories were evacuated from Baghdad. After their evacuation, these staff members continued to receive the salary and emoluments calculated at the rate applicable to service in Baghdad. They also received a monthly evacuation allowance to compensate for the additional expenses incurred as a result of their evacuation.

In November 1990, a small liaison office was opened in Amman, Jordan. On 25 April 1991, the Director of the Buildings and Commercial Services Division, Office of General Services, in a memorandum to the Under-Secretary-General for Administration and Management, reported the finding of an investigative mission that it would be feasible to regroup 106 ESCWA staff in Amman. He noted that: "It is envisaged that the office in Amman will act as a bridge point or a holding area for ESCWA staff later going back to the Headquarters in Baghdad, Iraq," and he recommended that no locally recruited staff in Baghdad be transferred to Amman, unless on an exceptional basis "the required skills are not available among international GS [General Service] staff."

On 2 May 1991, the recommendations contained in the report of the mission were approved by the Under-Secretary-General for Administration and Management. On 19 June 1991, the Officer-in-Charge of the Department of Administration and Management advised the Executive Secretary of ESCWA, inter alia, as follows:

"...

(a) The regrouping in Amman should be initiated immediately with a view to having all staff in Amman by the end of August.

(b) It should not be confined to 106 staff members as initially envisaged but should apply to all internationally recruited staff.

...

2. This will be a temporary regrouping for an initial period of one year, i.e. until August 1992. ... These arrangements will also result in a change of duty station. The duty station for all ESCWA staff will be Amman and salaries and allowances will be adjusted accordingly.

..."

In a memorandum dated 17 July 1991, addressed to all ESCWA Professional and International General Service staff members, the Chief, Division of Administration, ESCWA, requested all staff concerned, to report in Amman by 11 August 1991, explaining that:

"The regrouping in Amman is for an initial period ending 31 August 1992. The regrouping will result in a change of duty station with consequent adjustments in emoluments and compensation package. ...

... [International General Service] staff members will be placed in Amman GS salary scale on basis of same numerical grade and step as that in Baghdad ..."

In response to this memorandum, on 17 July 1991, the ESCWA Staff Council wrote to the Chief, Division of Administration, protesting the decisions made in connection with the regrouping on salaries and conditions of service. It noted that it had not been consulted, formally or informally, before the issuance of the memorandum. It stated that the Amman conversion ratio set forth in the memorandum was "not in line" with the agreement reached between the Staff Council and the Administration, namely that "the Baghdad conversion ratio would also be applied for ESCWA International General Service staff members moving to Amman."

On 27 August 1991, the Chief, Division of Administration, ESCWA, advised the Deputy Controller, Department of Administration and Management, that "the salary scale applied in Amman is much lower than that of Baghdad approximately 1/3," and that the substantial difference in the exchange rate between Iraq and Jordan "has led to a considerable drop in net take home salary in terms of dollars."

On 11 September 1991, the Chief, Division of Administration, ESCWA, transmitted to Headquarters a number of recommendations from the ESCWA Joint Advisory Committee, seeking by various means, to compensate for the decrease in remuneration of international General Service staff members resulting from the change of duty station. Proposed measures included the reinstatement of a non-resident allowance, approval of a rental subsidy, an increase in the rate of conversion, and the conduct of a place-to-place survey with retroactive effect. In a further cable, dated 16 September 1991, he requested approval to compensate staff transferred to Amman for advance rent paid in Baghdad prior to the regrouping of ESCWA staff.

In a letter dated 6 October 1991, the Chairman of the ESCWA Staff Council wrote to the Assistant Secretary-General, Office for Human Resources Management (OHRM), with several proposals to address the situation of international General Service staff members in Amman. He recalled that these staff members had relocated from Beirut to Baghdad in 1982, having accepted a "package-offer" which was "meant for Baghdad," and that there had been no mention that they could "be moved from one duty station to another, and be subjected to the local salary scale of any duty station." He noted that the Organization was "cutting away two thirds of their take-home pay for the same job," and proposed that these staff members should either "be entitled to payment of salary and other allowances prevailing at the original duty station plus payment of the applicable DSA at the new duty station" or "be granted the Field Service Status", which was suited to their de facto circumstances.

On 25 October 1991, the Acting Under-Secretary-General, Department of Administration and Management, replied to the communications of 11 September and 16 September 1991 from the Executive Secretary of ESCWA, concerning the salaries and conditions of service of the ESCWA staff. He provided details of a number of special measures taken to alleviate the circumstances of the regrouped International General Service staff members, including the continued application of the currency distribution provisions which had been applicable in Baghdad to enable staff members to receive a higher proportion of their salary in US dollars. He also advised the Executive Secretary that locally recruited staff members in Baghdad could not be allowed to join the office in Amman in light of the risk that they might then have a claim to international status, and that therefore they should be offered agreed terminations "under the best terms and conditions allowed by the Staff Rules and Regulations."

On 2 November 1991, the Chairman of the ESCWA Staff Council again wrote to the Assistant Secretary-General, OHRM, concerning the "unbearable financial difficulties" faced by International General Service staff in Amman and recalling the option "to rescind the decision taken to consider Amman as the new duty station of this category of staff, since the regrouping of ESCWA in Amman is a temporary one." He also recalled the other options proposed, namely "mission assignment or, reclassification of the category concerned into Field Service."

On 26 December 1991, the Applicants wrote to the Secretary-General, requesting a review of the administrative decision to apply the General Service salary scale of Amman to the internationally recruited General Service ESCWA staff members who had been transferred from Baghdad.

On 26 March 1992, a cable from OHRM to ESCWA noted that the International Civil Service Commission (ICSC) had not been able to complete consideration of various proposals relating to the International General Service staff in Amman during its session and had postponed any decision until its next session in July 1992.

However, "mindful of particular circumstances faced by IGS [International General Service] staff of ESCWA", ESCWA was informed of the decision taken to introduce "ad hoc measures to remedy situation in Amman." Among these measures was the payment of a rental subsidy, effective 1 September 1991, with a waiver of the maximum reimbursement limit of 40 per cent, and the payment of a non-pensionable supplement equivalent to 10 per cent of net salaries. ESCWA was instructed "It should be clearly explained to all concerned that above ad hoc measures have been approved on exceptional and temporary basis ... application of these measures shall not be construed as acquired rights of staff."

On 29 April 1992, the Director, Staff Administration and Training Division, OHRM, informed the Applicants that the challenged decision would be maintained. The letter stated, inter alia:

> "Annex I to the Staff Regulations, provides that the Secretary-General shall fix the salary scales for staff members in the General Service category on the basis of the best prevailing conditions of employment in the locality of the United Nations office concerned ... The local salary scale, once promulgated, is applicable to all the General Service staff members at the duty station, whether their status is local or international. ..."

On 27 March 1992, the Applicants lodged an appeal with the Joint Appeals Board (JAB). On 20 August 1992, the JAB adopted its report. Its findings and recommendation read, in part, as follows:

> "55. ...
>
> (b) ... that the application of the Amman General Service salary scale to the [Applicants] upon their relocation from Baghdad to Amman did not violate their terms of employment.
>
> (c) ... that the decision to consult ECWA General Service staff on a package of incentives in connection with the transfer of ECWA from Beirut to Baghdad did not constitute a precedent applicable to the present case, as the surrounding circumstances were different.
>
> ...

(e) ... that the [Applicants'] request for the restoration of the status quo ante cannot be entertained in view of the above findings.

(f) ... that the views of the [Applicants] were taken into consideration when the Administration discussed and reviewed the various issues related to the [ESCWA] regrouping in Amman.

56. The Panel therefore unanimously decides to make no recommendation in support of the appeal."

On 15 October 1992, the Assistant Secretary-General for Human Resources Management informed the Applicants as follows:

"[t]he Secretary-General has re-examined your case in the light of the Board's report. He fully concurs with the Board's findings and notes with approval the Board's decision to make no recommendation in support of the appeal. ...

The Secretary-General has decided to take no further action on this appeal."

On 17 May 1993, the Applicants filed with the Tribunal the joint application referred to earlier.

Whereas the Applicants' principal contentions are:

1. General Service staff members who have been internationally recruited for service at a given duty station cannot legally be automatically transferred to another duty station. The change in duty station resulted in a financial loss on an order of magnitude of 70 per cent and extreme hardship to the Applicants.

2. There is no global salary scale for General Service staff members, as there is for Professional and Field Service staff. The unilateral reduction by the Administration of the Applicants' salaries by two thirds caused excessive harm to and discriminated against General Service staff members. It was unreasonable and constituted an abuse of authority.

3. There was inadequate consultation prior to the transfer from Baghdad to Amman, in violation of the precedent set by the

1981-1982 relocation of ECWA from Beirut to Baghdad, and in violation of staff regulation 8.1.

Whereas the Respondent's principal contentions are:

1. The application of the Amman salary scale to the Applicants is a necessary consequence of the decision to relocate the ESCWA Secretariat from Baghdad to Amman and of the resulting change of duty station. That decision was taken by the Secretary-General in the proper exercise of his discretionary authority.

2. The Applicants' plea that the Respondent negotiate a settlement of their claims is not a matter for adjudication.

The Tribunal, having deliberated from 12 October to 4 November 1994, now pronounces the following judgement:

I. The Applicants, internationally recruited General Service staff members, appeal from a decision of the Respondent dated 15 October 1992, in which the Respondent concurred with the findings of the JAB and approved its unanimous decision to make no recommendation in support of the Applicants' appeal. In their observations, the Applicants submit a new plea that the Respondent be ordered to make available to them an enhanced termination benefit package, similar to that extended to locally recruited General Service staff members of the Baghdad ESCWA office whose posts were abolished. As the Tribunal has held in other cases, the introduction of new pleas in written observations on the Respondent's answer is improper and they will not be entertained.

II. This case is somewhat related to the applications which were decided by the Tribunal in Judgement No. 590, Abdala, et al. (1993). That case involved essentially the same group of staff members and the discontinuance of rental subsidies with respect to their residences in Baghdad. As a result of the Persian Gulf conflict, the activities of ESCWA in Baghdad were temporarily suspended and

all internationally recruited staff, including the Applicants, were evacuated from Baghdad under temporary repatriation measures. They continued to receive their base salary and other elements of remuneration at the Baghdad rate, plus a monthly evacuation allowance to compensate for the additional expenses incurred as a result of their evacuation. In June 1991, it was decided to proceed with a temporary regrouping in Amman of all internationally recruited staff. The staff of ESCWA was advised that the regrouping would result in a change of duty station to Amman and that salaries and allowances were to be adjusted accordingly.

III. In mid-July 1991, internationally recruited General Service staff members were informed that they should report to Amman by 11 August 1991 and that the regrouping would be for an initial period, ending on 31 August 1992. It is in respect of that regrouping that the claims of the Applicants arise.

IV. Before the Tribunal can consider the appropriateness of any remedial action sought by the Applicants, it must determine, in keeping with article 2 of its Statute, whether there has been non-observance of the contracts of employment or terms of appointment of those staff members. The first issue is, therefore, whether the Respondent's assignment of the Applicants to the ESCWA Office in Amman, and the application to them of Amman salary scales constituted non-observance of their terms of employment.

V. By way of background, the Tribunal recalls that, before ESCWA moved from Beirut to Baghdad in 1981, as a result of unsettled conditions in Beirut, the Applicants were locally recruited General Service staff members of ESCWA. In connection with their transfer to Baghdad, they were given the status of internationally recruited staff which entitled them to various expatriate benefits under staff rule 104.7. These included a non-resident allowance, an ad hoc

rental subsidy (the subject of Judgement No. 590), an arrangement with regard to convertible currency, an educational benefit and an installation grant.

VI. After the regrouping in Amman and as a result of complaints by the Applicants about their salaries and conditions of service, special measures were taken by the Administration in an effort to provide additional assistance to them. In response to a request for reinstatement of a non-resident allowance, it was pointed out that the allowance had been subsumed under payment of a mobility and hardship allowance which was higher than the non-resident allowance and that, therefore, under the applicable rules, a non-resident allowance could not be paid. With respect to payment of a rental subsidy, the matter was initially deferred pending a recommendation from the ICSC. With respect to the currency of salary payments, an exception was made which permitted payment in Amman of the same percentage of net base salaries in U.S. dollars as had previously been applicable in Baghdad. As an exception, payment of an extended assignment allowance was approved, under specific case-by-case circumstances. A modification favourable to the staff was made in connection with previously approved reimbursement of rental expenses in Baghdad. A favourable termination arrangement was also approved for staff members upon expiration of their fixed-term appointments. In short, benefits similar to those which had been provided to General Service staff members in 1981, in connection with their transfer to Baghdad from Beirut, continued to be provided in connection with the regrouping in Amman. The main dissatisfaction, however, on the part of the Applicants stems from the fact that the General Service salary scales in Amman, which are based on salary levels in the Amman area, are significantly lower than the General Service salary scales in Baghdad.

VII. The Respondent argues and the JAB correctly found that staff regulation 1.2, which provides:

> "Staff members are subject to the authority of the Secretary General and to assignment by him to any of the activities or offices of the United Nations ..." (Emphasis added)

authorized him to transfer the internationally recruited Applicants from Baghdad to Amman in connection with the relocation of ESCWA. As indicated above, the Applicants' challenge to the authority of the Secretary-General regarding their assignment to Amman is essentially based on economic considerations. This is hardly a valid ground for attacking the Secretary-General's authority under staff regulation 1.2.

VIII. Nothing in the Staff Regulations or Rules provides support for the Applicants' contention that internationally recruited General Service staff can be assigned to Amman for a one year period only if they continue to be paid under the salary scale of Baghdad, plus a daily subsistence allowance. The Secretary-General has the authority to change the duty station, and when internationally recruited General Service staff are transferred to a new duty station, their salary is established in accordance with staff regulation 3.1, Annex I, paragraph 7 to the Staff Regulations, and staff rule 103.2[1/]. Under this regime, the Secretary General fixes the salary scales for staff members in the General Service category on the basis of the best prevailing conditions of employment in the duty station of the office concerned. To this end, surveys of local employers are conducted at each duty station. On the basis of the surveys, salary scales are established and are applied to all General Service staff in the locality. In addition, a system for interim adjustments to General Service salary scales is aimed at providing for cost-of-living changes at each duty station. See, Judgement No. 395, Oummih, et al. (1987).

[1/] There may, of course, be other differences in entitlements as between locally recruited and internationally recruited General Service staff such as those described in staff rule 104.7 and those exceptionally provided in this case to take account of special circumstances.

IX. Hence, a change of duty station may result in a change in net remuneration, but this may be a normal consequence of the methodology by which salary scales are determined. A somewhat analogous situation was before the Tribunal in Judgement No. 629, Clavel and Sallier (1993), in which General Service staff members who had been promoted from the General Service category to the Professional category subsequently experienced a reduction from what their net remuneration would have been had they remained in the General Service category. This resulted from a difference in the remuneration system as between the General Service and Professional categories. Their situation was, therefore, not brought about by non-observance of their contracts of employment and their requests for relief were rejected. See, also, ILOAT Judgement No. 1322, Anderson (1994). A change in duty station which leads to a reduction in remuneration, while regrettable, is not in itself a violation of the Applicants' terms of employment.

X. In such a situation, it is not the function of the Tribunal to substitute its judgement for that of the Respondent with regard to whether or how to deal with claimed adverse economic consequences such as those asserted by the Applicants as a result of their relocation. That, as the JAB concluded, is a matter for the Secretary-General's judgement. The Tribunal is unable to find that the Secretary-General has violated the Applicants' contracts of employment or terms of appointment.

XI. The Applicants contend that in order to induce them to move from Beirut to Baghdad, special benefits were offered by the Administration and they moved in reliance thereon. From this, they conclude that a precedent was established under which it was implicitly agreed that, before they were moved again, they would first be consulted and further arrangements agreeable to them would be made by the Respondent. The Tribunal notes that the Applicants were given the status of internationally recruited General Service staff with a package of special benefits, as described above, in

order to induce them to move from Beirut to Baghdad. The reason given was the anticipated unavailability of qualified persons in Baghdad for the posts in question. This concern does not appear to have been a factor in connection with the relocation to Amman. Hence, the situation was, as the JAB found, different.

XII. There is no evidence of any undertaking, express or implied, concerning any limitations on the authority of the Respondent under the Staff Regulations and Rules with regard to possible future relocation of the ESCWA office and/or the Applicants. The Staff Regulations and Rules make clear the nature of the Respondent's authority in those regards. It does not follow, therefore, that, because it was found necessary to provide inducements for the Applicants to transfer from Beirut to Baghdad, a precedent was established mandating that the Respondent either retain Baghdad salary scales or reach some further agreement with the Applicants as a condition of being able to assign them to a new duty station.

XIII. With respect to the Applicants' contention that the decision to transfer them to Amman was invalid because it was not preceded by consultations under staff regulation 8.1 and staff rules 108.1, et seq., the Tribunal agrees with the Respondent's contention that decisions as to the geographic location of the Secretariat or of any particular subsidiary organ of the United Nations, such as a Regional Commission, are not matters subject to mandatory consultations with staff representative bodies under these regulations and rules. Decisions relating thereto may involve diplomatic, political, financial, emergency and policy considerations. This does not mean, however, and the Respondent so concedes, that the effects on staff members of a relocation and related measures are not proper matters for consultation at an appropriate time. In the present case, the views of the staff with regard to measures for their benefit in connection with the

relocation were considered by the Respondent. He explained why it was not possible to grant all of the staff requests. Yet, as a result of the consideration given to the staff requests, some additional benefits were provided. Accordingly, the Tribunal finds no support for the Applicants' contention that either their relocation or its terms were invalid on account of non-compliance with any applicable staff regulation or rule relating to consultation.

XIV. The Tribunal recognizes that a degree of financial hardship is inevitably involved in the relocation of internationally recruited staff if the applicable Staff Rules cause a reduction in their net remuneration. The Respondent also recognizes that the alternative faced by the staff in such a situation requires difficult decisions. Here, the situation arose from external events - not because of any intent to impose hardship on the staff. On the contrary, in recognition of the need for equitable transitional arrangements, the Respondent made reasonable efforts to ameliorate the problems associated with relocation. The measures adopted were in keeping with the status of the Applicants as General Service staff, who were internationally recruited. But no internationally recruited General Service staff member can reasonably expect to be paid indefinitely at the salary scale of a former duty station. The Staff Regulations and Rules contemplate that locally recruited General Service staff members' appointments are ordinarily terminated if their posts are abolished due to relocation of the duty station. Internationally recruited General Service staff may be transferred and are entitled to international benefits, but their salaries are calculated on the basis of the scale for the duty station to which they are transferred.

XV. Accordingly, the Tribunal finds no reason to consider any of the remedial requests set forth in the pleas.

XVI. For the foregoing reasons, the application is rejected, as is the request for legal fees.

(Signatures)

Samar SEN
President

Jerome ACKERMAN
Vice-President

Mikuin Leliel BALANDA
Member

New York, 4 November 1994

B. Maria VICIEN-MILBURN
Executive Secretary